



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 24 2013

OFFICE OF  
WATER

Mr. John Hall  
Hall & Associates  
1101 15<sup>th</sup> Street, NW, Suite 203  
Washington, D.C. 20005-5004

Re: Freedom of Information Act Request EPA-HQ-2014-000552

Dear Mr. Hall:

This is an interim, partial response to your Freedom of Information Act request of October 25, 2013. On December 2, 2013, you modified your request to provide only the following records:

1. Any legal or regulatory analysis or briefing materials prepared in support of the agency's decision to only apply the *Iowa League of Cities* decision in the 8<sup>th</sup> Circuit;
2. Any notifications given to the Regional offices from EPA Headquarters regarding the agency's aforementioned decision to only apply the *Iowa League of Cities* decision in the 8<sup>th</sup> Circuit; and
3. Any documents explaining how peak flow processing (also known as "blending") and bacteria mixing zones for CSO and stormwater discharges will be addressed in permitting and enforcement actions within the 8<sup>th</sup> Circuit versus outside of the 8<sup>th</sup> Circuit.

On December 11, 2013, you further clarified that you limited the request to documents residing at or prepared by EPA Headquarters or used by EPA Headquarters to render its decision. In response, I am enclosing the following documents which are responsive to your request:

1. Slide from powerpoint presentation "NPDES Litigation Update", dated July 2013
2. Speaker notes for presentation "NPDES Litigation Update," dated July 2013.
3. Email from Kevin Weiss to Richard Witt, subject "FW: Region 7: WEF / 4 States Meeting Agenda," dated October 28, 2013.

4. Email from Kevin Weiss to Glenn Curtis, subject "Desk statement for adverse decision in a Clean Water Act case," dated March 27, 2013.
5. Desk Statement on Iowa League of Cities CWA decision, dated March 26, 2013.
6. Email from Kevin Weiss to Glenn Curtis, subject "BioAciq," dated April 4, 2013.

We are unable to provide the following documents which have been determined to be exempt from mandatory disclosure by either the deliberative process privilege of 5 U.S.C. 552(b)(5) as pre-decisional, deliberative, and confidential or the under the investigatory records compiled for law enforcement purposes privilege of 5 U.S.C. 552(b)(7).

1. Working draft of paper entitled "How Should EPA Interpret the *Iowa League* decision?" This is an undated draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
2. Working draft of paper entitled "Issue: Should EPA recommend that DoJ petition the Supreme Court for writ of certiorari to overturn the Eighth Circuit's decision in *Iowa League of Cities*?" dated August 10, 2013. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
3. Working draft of paper entitled "Iowa League of Cities v. EPA," undated. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
4. Working draft of paper entitled "Options for interpreting the *Iowa League* decision within the Eighth Circuit," undated. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
5. Working draft of paper entitled "Options for clarifying the Impact of Iowa League of Cities," dated October 30, 2013. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.



6. Working draft of paper entitled "Scope of the Iowa League of Cities Decision", dated July 19, 2013. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
7. Working draft memorandum, From Andrew Sawyers to Regional Water Permits Division Directions, Regions 1-10, subject "Applicability of *Iowa League* decision to EPA permitting determinations," dated November 5, 2013. This is a draft document prepared by Headquarters employees. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
8. Working draft memorandum "EPA's regulatory approach following the 8<sup>th</sup> Circuit's *Iowa League of Cities decision*" dated September 17, 2013. This is a draft document prepared by Headquarters employees. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
9. Working draft of paper "Potential Response to Iowa League," undated. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
10. Memorandum from Alexis P. Anderson, legal intern to Joanna Citron Day, RE: *Iowa League of Cities v. EPA*, dated November 21, 2013. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
11. Working draft of paper entitled "How Should We Answer the Actiflo Question?" This is an undated draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
12. Working draft of paper entitled "Option 1", dated September 9, 2013. This is a draft document prepared by Headquarters employees discussing a potential option. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
13. Working draft of paper entitled "Option 2" dated September 9, 2013. This is a draft document prepared by Headquarters employees discussing a potential option. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.

14. Working draft of paper entitled "Options for Interpreting Iowa League of Cities decision," undated. This is a draft document prepared by Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
15. Email from Joanna Day to James Vinch, subject "memo from my legal intern", dated November 25, 2013. This is an email chain involving EPA Headquarters employees discussing options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
16. Email from Carol DeMarco to Joseph Theis, subject "PVSC and blending (PLEASE READ)", dated November 20, 2013. This is an email chain involving EPA Headquarters employees discussing litigation specific matters. This document is withheld under the investigatory records compiled for law enforcement purposes privilege of 5 U.S.C. 552(B)(7) and the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
17. Email from Loren Denton to James Vinch, subject "Enforcement Cases Affected by Iowa League", dated October 30, 2013. This is an email chain involving EPA Headquarters employees discussing litigation specific matters. This document is withheld under the investigatory records compiled for law enforcement purposes privilege of 5 U.S.C. 552(B)(7) and the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
18. Email from Leslie Allen to Alan Morrissey, subject "various Gary/Region 5 memos" dated October 30, 2013. This is an email chain involving Department of Justice and EPA Headquarters employees discussing potential options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
19. Email from Loren Denton to James Vinch, subject "Decision 711\_F\_3d\_844.rtf; Iowa League of Cities Briefing 9-26-13 v4.docx" dated September 26, 2013. This is an email chain involving EPA Headquarters employees discussing options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.
20. Email from Kevin Weiss to James Vinch, subject "Revised Q&A", dated September 26, 2013. This is an email chain involving EPA Headquarters employees discussing options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.



21. Email from Kevin Weiss to James Vinch, subject "Follow up on Iowa League of Cities discussion", dated August 28, 2013. This is an email chain involving EPA Headquarters employees discussing options. This document is withheld under the deliberative process privilege of 5 U.S.C 552 (b)(5) as pre-decisional, deliberative, and confidential.

We continue to search and review materials to determine which materials may be released and which will be withheld. You do not need to appeal EPA's decision to withhold documents at this time. You will receive administrative appeal rights at the time you receive the completed response and may appeal all of the withholdings at that time.

The cost of responding to the FOIA to date is \$1,015.75. An itemized invoice covering the charges for processing your request to date is enclosed. Please forward your check or money order, made payable to the U.S. Environmental Protection Agency, within 30 days of the date of this response. Your check should refer to the FOIA number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated. If we determine that there will be additional costs for responding to the FOIA, we will request a written assurance of payment for the additional amount.

Again, this is an interim, partial response to your request. At this time, the EPA estimates the Agency will be able to complete this response, along with a description of your appeal rights, by January 31, 2014. Please contact me at (202) 564-1185 if you have any questions regarding our response.

Sincerely,



Deborah G. Nagle, Director  
Water Permits Division

Enclosures